MOTION FILED

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No. 96-517

In The

Supreme Court of the United States

October Term, 1996

WILLIAM R. FRY, ANTHONY J. MARRA, SIDNEY MISHKIN, THOMAS J. DWYER, KATHLEEN B. DWYER, PROGRESSIVE UNITED CORPORATION, and MERIDIAN STRATEGIC INVESTMENTS, L.P., both individually and as class representatives,

Petitioners,

v.

UAL CORPORATION, a Delaware corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION OF SECURITIES VICTIMS OF AMERICA FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS

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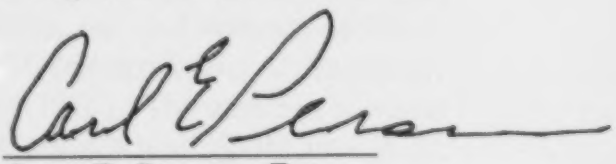
MOTION OF SECURITIES VICTIMS OF AMERICA FOR LEAVE TO FILE THE ATTACHED *AMICUS CURIAE* BRIEF

Amicus Curiae, Securities Victims Of America, is a not-for-profit corporation formed in early 1995 for the prevention of the abuse of investors through misrepresentation, nondisclosure and other wrongs committed by brokers. In 1995, your *Amicus* supplied materials to Congress for its consideration in drafting the Securities Reform Act. These materials governed suits brought by investors seeking to enforce the federal securities laws' anti-fraud provisions which are at issue in this suit. Your *Amicus* wishes to address the Seventh Circuit's denial of the investor protections which the federal securities laws were intended to provide.

Amicus Curiae sought the consent of the Petitioners and Respondent to file this brief. While Petitioners consented to the filing, Respondent refused to consent. Respondent gave no specific reasons for refusing to consent to this filing.

Amicus Curiae has no stake or interest in the outcome of this litigation. Our interest is in the development of the law and in insuring that the investor protections crafted in the securities laws are upheld. The attached *amicus curiae* brief therefore views the issues raised in the Petition for Certiorari from a broader perspective than either of the litigants.

Amicus curiae therefore requests leave to file the attached brief.



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BRIEF OF *AMICUS CURIAE* SECURITIES VICTIMS OF AMERICA IN SUPPORT OF PETITIONERS

STATEMENT OF INTEREST

Amicus Curiae hereby adopts the statements set forth in the above motion as his statement of interest.

STATEMENT OF THE CASE

Amicus Curiae adopts the statement of the case in Petitioners' Petition For Certiorari.

ARGUMENT

Rule 10b- 5 provides that it is unlawful to make an "untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances . . . not misleading". 17 C.F.R. § 240.10b-5. The Supreme Court has held that information omitted from a statement is material and must be disclosed if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information . . . . *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-232 (1988) citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 448 (1976). The question is would "the omitted fact . . . have assumed actual significance in the deliberations of the reasonable" investor with all "doubts... resolved in favor of those the statute is designed to protect . . .", not whether the omitted fact would have been determinative. *Id.* Here the Seventh Circuit created a wholly new legal standard. It held that no disclosure was required unless investors could prove that the omitted fact

rendered the statement "inconceivable" or a "complete non-starter". Pet. App. 16A, 17A.[1] This creates far too high a threshold for disclosure. Certainly information which significantly affects the likelihood of a stated event will occur is very important to investors even if it does not render the event "inconceivable". But under the Seventh Circuit's test investors are not entitled to such information.

CONCLUSION

For the foregoing reasons *Amicus Curiae* Securities Victims Of America requests that the Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit be granted and that the Supreme Court either reverse summarily or grant a plenary review.

RESPECTFULLY SUBMITTED

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[1] These references are to the Appendix submitted with the Petition for Certiorari.